IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8880 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MINOR KRUNAL KRISHNAKANT R TAMAKUWALA THRO.GUARDIAN

Versus

STATE OFGUJARAT

Appearance:

1. Special Civil Application No. 8880 of 2003

MRS KETTY A MEHTA for Petitioner No. 1-17

MR L B DABHI AGP for Respondent No. 1-2

TANNA ASSOCIATES for Respondent No. 3

MR KB PUJARA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 17/12/2004

ORAL JUDGEMENT

1. The petitioners herein have preferred this petition in order to declare Rule 3.2 of the Rules and Regulations for Admission to Degree Courses in M.B.B.S. and other medical branches issued by the Government of Gujarat, at Annexure-D to the petition, as illegal and to

declare that Government Resolution dated 28/05/2003, at Annexure-C to the petition, shall not affect the right of Surat Municipal Institute of Medical Education & Research (for short, "the said Institute") to prescribe reasonable fee structure for the Institute.

2. The petitioners are the local residents of Surat and are interested in medical education in the said Institute. The Institute is a non-granted Institution and is a self-financed Medical College, promoted and managed by the Surat Municipal Corporation. Surat Municipal Corporation in its General Meeting on 26/06/2000 passed a Resolution that the children of the local residents of Surat shall be given priority in getting admission to the said Institute. Accordingly, the Municipal Commissioner of Surat was given the authority to frame Rules and to enter into necessary communication with the Government of Gujarat and other authorities for that purpose.

3. Accordingly, the Institute framed its own Rules and Regulations for admission and decided to give priority to students who were the local residents of Surat. The Government of Gujarat, respondent no.1 herein, by Resolution dated 28/05/2003, at Annexure-C to the petition, prescribed the fee structure and framed Rules and Regulations for Degree Courses in M.B.B.S., wherein admissions were to be given by the Joint Admission Committee for professional courses in Gujarat State. Rule 3.2 of the Rules and Regulations For Admission to Degree Courses in M.B.B.S. provides that "In Surat Municipal Institute of Medical Sciences, Surat, 80 % of the total seats be filled up by Central Admission Committee." The petitioners made various representations to the State Government with respect to the above Rule, but to no avail. Hence, this petition.

4. Mrs.Ketty A Mehta learned advocate for the petitioners has submitted that various authorities had given representations to the State Government to the effect that admissions to the said Institute, through Centralized Admission Committee of the State, would be contrary to the interest of the Surat Municipal Corporation which had specifically decided to establish the Institute for the benefit of the students who resided in Surat.

5. In support of the proposition, Mrs.Mehta has placed reliance on the decision of the Apex Court in the case of Ahmedabad Municipal Corporation & anrs. v. Nilaybhai R. Thakore & anr. reported in 1999 (8) S.C.C. p.139 to contend that it was open to the respondent

Institute to insist on seats being allotted to the local students on a preferential basis and that the State Government cannot insist that students other than local students should be admitted by the respondent Institute as the same would be detrimental to the interest of the petitioners.

6. Mrs.Mehta has further contended that the aforesaid decision has been followed by the Division Bench of this Court in Letters Patent Appeal No.1362 of 2004 decided on 29/07/2004, more particularly, Paras 12 & 13 of the decision;

> ""12. In case of Ahmedabad Municipal Corporation v. Nilaybhai R. Thakore (supra) while dealing with the dispute as regards definition of "Local Students", the Hon'ble Supreme Court has commended the action of Ahmedabad Municipal Corporation in establishing and running medical college in following words;
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> "It is very rarely that a local body considers it as its duty to provide higher and professional education. In this case, the Municipality of Ahmedabad should be complemented for providing medical education to its resident students for the last 30 years or more. It has complied with its constitutional obligation by providing 15 % of the seats available to all-India merit students. Its desire to provide as many seats as possible to its students is a natural and genuine desire emanating from its municipal obligations which deserves to be upheld to the extent possible. Therefore, with a view to protect the laudable object of the Municipality, we deem it necessary to give the impugned rule a reasonable and practical interpretation and uphold its validity."
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> 13. Therefore, taking into consideration the undisputed fact that for three academic year, respondent no.1 college was permitted to admit students on the basis of Rule-3 framed by it for admission to 1st year M.B.B.S. course and the admission process was conducted by the agency of the State Government, there is no good reason to hold otherwise for the year under consideration, notwithstanding the fact that the State Government has while framing Rule-3.5.1(b) of the Rules for admission for academic year 2004-05 provided for 50 % quota, bearing in mind the aforesaid observations made in case of Nilaybhai

R. Thakore (supra). The natural and genuine desire for fulfilling obligations as provided under Section 66(21) of the B.P.M.C. Act, if respondent no.2 college run by Surat Municipal Corporation has expressed desire to provide as many seats as possible to its local students, it is natural and deserves to be upheld to the extent possible. However, in the said case 15 % of the seats available were reserved for all-India students and as an interim measure, it is thought fit that respondent no.1 college be directed to provide 15 % of the available seats for students other than local students. Hence, it is directed that out of total number of seats available for admission to respondent no.1 college, 85 % of the seats shall be filled up by granting admission to the local students as defined in the Rules framed by respondent no.1 institution, while leaving aside 15 % of the seats for students other than local students and the same shall be filled up in consultation with the Centralized Admission Committee constituted by the State Government.""

7. Mrs.Mehta has, therefore, submitted that the directions issued by this Court in the aforesaid Letters Patent Appeal is required to be issued in the present case also. Hence, in view of the law laid down by the Apex Court in the case of Ahmedabad Municipal Corporation v. Nilaybhai R.Thakore (supra) and in the aforesaid Letters Patent Appeal, I am of the opinion that Rule 3.2 of the Rules and Regulations issued by the Government of Gujarat, at Annexure-D to the petition, shall not govern the field and the respondents will have to follow the ratio laid down in the said two decisions.

8. In the result, Rule 3.2 of the Rules and Regulations for Admissions to Degree Courses in M.B.B.S. and other medical branches, issued by the Government of Gujarat, at Annexure-D to the petition, whereby 80 % of the total seats in the said Institute was directed to be filled up by the Central Admission Committee, is quashed and set aside. With respect to the prayer regarding fee structure, I am not adjudicating upon the same at this stage, as decision is already pending before the Committee appointed by the State Government, namely Justice R. J. Shah Committee. With the above observations, the petition is partly allowed. Rule is made absolute to the aforesaid extent.

(K. S. Jhaveri, J.)

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ORDER IN CIVIL APPLICATION No.5127 of 2003

In view of the order passed in the main matter, this Civil Application will not survive. It stand disposed of accordingly.

(K. S. Jhaveri, J.)

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